

CHAPTER 7. EQUAL EMPLOYMENT OPPORTUNITY AND AFFIRMATIVE ACTION

SUBCHAPTER 3. POLICY PROHIBITING DISCRIMINATION, HARASSMENT OR HOSTILE ENVIRONMENTS IN THE WORKPLACE; COMPLAINT PROCEDURE, AND APPEALS

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4A:7-3.1 Policy prohibiting discrimination, harassment or hostile environments in the workplace

(a) The State of New Jersey is committed to providing every State employee with a workplace free from unlawful discrimination. All forms of unlawful employment discrimination based upon race, creed, color, national origin, ancestry, age, sex, marital status, familial status, religion, affectional or sexual orientation, atypical hereditary cellular or blood trait, genetic information, liability for service in the Armed Forces of the United States, or disability are prohibited and will not be tolerated. Sexual harassment is a form of unlawful gender discrimination and, likewise, will not be tolerated.

1. Unlawful discrimination/harassment undermines the integrity of the employment relationship, compromises equal employment opportunity, debilitates morale and interferes with work productivity. This policy applies to all employees and applicants for employment in State departments, commissions, State colleges, and authorities. The State of New Jersey will not tolerate harassment or discrimination by anyone in the workplace including supervisors, co-workers, or non-employees. This policy applies to conduct which occurs in the workplace and also extends to conduct which occurs at any location that can be reasonably regarded as an extension of the workplace, such as any field location, any off-site business-related social function, or any facility where State business is being conducted and discussed.

2. This policy also applies to third party harassment. Third party harassment is unwelcome behavior of a sexual, racial or derogatory nature regarding any protected category, that is not directed at an individual but is a part of that individual's work environment. Third party harassment based upon any of the aforementioned protected categories is prohibited by this policy.

3. This policy pertains to all employment practices such as recruitment, selection, hiring, training, promotion, transfer, assignment, layoff, return from layoff, termination, compensation, fringe benefits, working conditions and career development.

(b) Racial, gender, national origin or ancestry, age, religious, disability, affectional or sexual orientation, marital status, familial status, atypical hereditary cellular or blood trait, genetic information, liability for service in the Armed Forces of the United States discrimination or harassment is prohibited.

1. It is a violation of this policy to engage in any employment practice or procedure which treats an employee less favorably based upon a person's race, gender, national origin or ancestry, religion, age, disability, affectional or sexual orientation, marital status, familial status, atypical hereditary cellular or blood trait, genetic information, or liability for service in the Armed Forces of the United States.

2. It is also a violation of this policy to use derogatory or demeaning slurs to refer to a person's race, gender, age, religion, disability, affectional or sexual orientation, or ethnic background which have the effect of harassing an employee or creating a hostile work environment. Harassment or the creation of a hostile work environment can occur even if there was no intent on the part of an individual to harass or demean another.

3. Examples of behaviors that may constitute prohibited workplace discrimination or harassment include, but are not limited to:

i. Discriminating against an individual with regard to terms and conditions of employment because of that individual's race, gender, age, religion, disability, affectional or sexual orientation, place of origin, or his or her ancestors' place of origin;

ii. Treating an individual differently because of race, gender, age, religion, disability, affectional or sexual orientation, place of origin, or his or her ancestors' place of origin, or because an individual has the physical, cultural or linguistic characteristics of a racial or national origin group;

iii. Treating an individual differently because of marriage to or association with persons of a racial, religious or national origin group; or due to membership in or association with an organization identified with the interests of a racial, religious or national origin group; or because an individual's name or spouse's name is associated with a racial, religious or national origin group;

iv. Calling another by an unwanted nickname which refers to one or more of the above characteristic, or telling ethnic jokes which harass an employee or create a hostile work environment;

v. Using derogatory references regarding any of the above characteristics in any job-related communication;

vi. Engaging in threatening, intimidating, or hostile acts, in the workplace, based on the foregoing classifications; or

vii. Displaying or distributing material in the workplace that contains language or images that are derogatory or demeaning, based upon any of the foregoing classifications.

(c) It is a violation of this policy to engage in sexual harassment of any kind.

1. For the purposes of this policy, sexual harassment, with or without sexual conduct, is defined, as in the Equal Employment Opportunity Commission Guidelines, as unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when, for example:

i. Submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment;

ii. Submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual; or

iii. Such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile or offensive working environment.

2. Sexual harassment generally falls into two categories: quid pro quo and hostile work environment harassment:

i. Quid pro quo sexual harassment is a form of harassment that may include unwelcome sexual advances, requests for sexual favors or other verbal or physical conduct based on the gender of the affected employee when:

(1) Submission to such conduct is made either explicitly or implicitly a term or condition of employment; or

(2) Submission to or rejection of such conduct by an individual is used as a basis for employment decisions.

ii. It shall be a violation of this policy for any person to use his or her authority to make any sexual advance toward an individual over whom the person is authorized to make, recommend or otherwise to influence personnel actions; to grant, recommend, or refuse to take personnel action on the basis of an employee's gender or sexual orientation or in exchange for sexual favors; or to take or fail to take a personnel action as reprisal against any employee for rejecting or reporting a sexual advance. Sexual advances or requests for sexual favors can be in the form of either expressed or implied comments, writings, or actions.

3. Hostile work environment sexual harassment is a form of harassment that may include unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature which has the purpose or effect of substantially

interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment. Gender-based harassment may give rise to a claim of a hostile environment whether or not sexual activity or language is involved, if it has the purpose or effect of abusing, devaluing or subordinating the members of one sex and it adversely affects an individual's employment opportunities.

4. Third party sexual harassment is unwelcome behavior of a sexual nature or based on sex that is not directed at an individual but is a part of an individual's work environment.

5. Examples of prohibited behaviors that may constitute sexual harassment include, but are not limited to:

- i. Generalized gender-based remarks and comments;
- ii. Unwanted physical contact such as intentional touching, grabbing, pinching, brushing against another's body or impeding or blocking movement;
- iii. Verbal or written sexually suggestive or obscene comments, jokes or propositions including letters, notes, e-mail, invitations, gestures or inappropriate comments about a person's clothing;
- iv. Visual contact, such as leering or staring at another's body, gesturing, displaying sexually suggestive objects, cartoons, posters, magazines or pictures of scantily-clad individuals;
- v. Explicit or implicit suggestions of sex by a supervisor or manager in return for a favorable employment action such as hiring, compensation, promotion, or retention;
- vi. Suggesting or implying that failure to accept a request for a date or sex would result in an adverse employment consequence with respect to any employment practice such as performance evaluation or promotional opportunity; or
- vii. Continuing to engage in certain behaviors of a sexual nature after an objection has been raised by the target of such inappropriate behavior.

(d) Any employee who believes that she or he has been subjected to any form of prohibited discrimination/harassment, including sexual harassment, or who witnesses others being subjected to such harassment or discrimination is encouraged to promptly report the incident(s) to either their supervisor or manager or directly to their respective department, commission, State college or authority's Equal Employment Opportunity/Affirmative Action Officer or to any other persons designated by their department head to receive workplace discrimination complaints. All employees are expected to cooperate with investigations undertaken pursuant to (f) below. Failure to

cooperate in an investigation may result in disciplinary action, up to and including termination.

(e) Supervisors should make every effort to maintain a work environment that is free from any form of prohibited discrimination/ harassment. Supervisors are expected to take all allegations of discrimination/harassment, including sexual harassment, seriously, and to immediately refer the matter to the individual(s) responsible for receiving such complaints. Those individuals should include persons referenced in their department's, commission's, State college's, or authority's procedures for reporting workplace discrimination. All complaints will be reviewed and prompt and appropriate remedial action will be taken to address any substantiated claim. All supervisors receiving complaints of unlawful discrimination/harassment must immediately advise the department, commission, State college or authority's Equal Employment Opportunity/Affirmative Action Officer of the complaint.

(f) Each department, commission, State college or authority shall have in place procedures for reporting, investigating, and where appropriate, remediating claims of discrimination/harassment. Each department, commission, State college or authority is responsible for designating an individual or individual(s) to receive complaints of discrimination/harassment, including sexual harassment, investigate such complaints, and recommend appropriate remediation of such complaints. In addition to the Equal Employment Opportunity/Affirmative Action Officer, each department, commission, State college or authority should have alternate persons designated to receive claims of discrimination/harassment.

1. All investigations of discrimination/harassment claims shall be conducted in a way that respects, to the extent possible, the privacy of all the persons involved. The investigations shall be conducted in a prompt, thorough and impartial manner. The results of the investigation shall be forwarded to the respective agency head to make a final decision as to whether a violation of the policy has been substantiated.

2. Where discrimination/harassment is found to have occurred, the agency shall take prompt and appropriate remedial action to stop the discrimination/harassment and deter its reoccurrence.

3. The remedial action taken may include counseling, training, intervention, mediation, and/or the initiation of disciplinary action up to and including termination of employment.

4. Each department, commission, State college or authority shall maintain a written record of the discrimination/harassment complaints received. Written records shall be maintained as confidential records to the extent practicable and appropriate.

(g) Retaliation against any employee who alleges that she or he was the victim of discrimination/harassment, or against any employee who provides information in the

course of an investigation into claims of unlawful discrimination/harassment in the workplace is prohibited by this policy. Any employee bringing a complaint, providing information for an investigation, or testifying in any proceeding under this policy shall not be subjected to adverse employment consequences based upon such involvement or be the subject of retaliation.

(h) If any employee knowingly makes a false accusation of unlawful discrimination/harassment or knowingly provides false information in the course of an investigation of a complaint, such conduct may be grounds for discipline. Complaints made in good faith, however, even if found to be unsubstantiated, shall not be considered a false accusation.

(i) All complaints and investigations shall be handled, to the extent possible, in a manner that will protect the privacy interests of those involved. To the extent practical and appropriate under the circumstances, confidentiality shall be maintained throughout the investigatory process. In the course of an investigation, it may be necessary to discuss the claims with the alleged harasser and other persons who may have relevant knowledge. Therefore, it may be necessary to disclose information to persons with a legitimate need to know about the matter. All persons interviewed shall be directed not to discuss any aspect of the investigation with others in light of the important privacy interests of all concerned. Failure to comply with this confidentiality directive may result in disciplinary action.

(j) Any employee found to have violated this policy may be subject to appropriate disciplinary action which may include: reprimand, suspension, reassignment, or termination of employment. Referral to another appropriate authority for review for possible violation of State and Federal statutes may also be appropriate.

(k) All State departments, commissions, State colleges, and authorities should make efforts to provide employees with information regarding the prevention of unlawful discrimination/ harassment and the complaint procedure to be followed in filing complaints when unlawful harassment/discrimination has occurred. All State departments, commissions, State colleges and authorities should make efforts to provide supervisors and managers with training that will inform them of the appropriate steps to be taken to address complaints of unlawful discrimination/harassment.

4A:7-3.2 Model procedures for internal complaints alleging discrimination, harassment or hostile environments in the workplace

Each State department, commission, State college, and authority is responsible for implementing this model procedure, completing it to reflect the structure of the organization, and filing a copy of the completed procedure with the Department of Personnel.

"(a) All employees have the right and are encouraged to immediately report suspected violations of the State Policy Prohibiting Discrimination, Harassment or Hostile Environments in the Workplace, N.J.A.C 4A:7-3.1.

(b) Employees can report incidents of discrimination to either (name of Officer), the EEO/AA Officer, or to any supervisory employee in the (Appointing Authority). Employees may also report such incidents to (Authorized Designee).

(c) Employees should make every effort to report complaints promptly. Delays in reporting may not only hinder a proper investigation, but may also unnecessarily subject the victim to continued unlawful conduct.

(d) Supervisory employees should immediately report all alleged violations of the State Policy Prohibiting Discrimination, Harassment or Hostile Environments in the Workplace, whether reported by an employee or observed directly, to (Name of Officer), EEO/AA Officer.

(e) If reporting a complaint to any of the persons set forth above presents a conflict of interest, the complaint may be filed directly with the Department of Personnel, Division of EEO/AA, PO Box 315, Trenton, NJ 08625. An example of such a conflict would be where the individual against whom the complaint is made is involved in the intake, investigative or decision making process.

(f) While not mandatory, in order to facilitate a prompt, thorough and impartial investigation, all complainants should fill out a Discrimination Complaint Processing Form (DPF-481).

(g) During the initial intake of a complaint, the EEO/AA Officer or authorized designee will obtain information regarding the workplace discrimination, harassment or hostile environment complaint, and determine if intermediate protective measures are necessary to prevent continued violations of the State's Policy Prohibiting Discrimination, Harassment, and Hostile Environments in the Workplace.

(h) At the EEO/AA Officer's direction, when necessary, a prompt, thorough, and impartial investigation into the alleged harassment or discrimination will take place.

(i) An investigatory report will be prepared by the EEO/AA Officer or his or her designee when the investigation is completed. The report will include:

(a) a summary of the complaint;

(b) summary of the facts developed through the investigation; and

(c) an analysis of the allegations and the facts. The investigatory report will be submitted to (Appointing Authority Head) who will issue a final determination.

(j) The (Appointing Authority Head) will review the investigatory report issued by the EEO/AA Officer or authorized designee, and make a determination as to whether the allegation of a violation of the State's Policy Prohibiting Discrimination, Harassment and Hostile Environments in the Workplace has been substantiated. If a violation has occurred, the (Appointing Authority Head) will determine the appropriate corrective measures necessary to immediately remedy the violation.

(k) The (Appointing Authority Head) will issue a final letter of determination to all parties, containing the results of the investigation and setting forth the complainant's right of appeal to the Merit System Board. The Division of EEO/AA, Department of Personnel shall be furnished with a copy of the final letter of determination.

1. The investigation of a complaint shall be completed and a final letter of determination shall be issued no later than 120 days after the initial intake of the complaint referred to in (g) above is completed.

2. The time for completion of the investigation and issuance of the final letter of determination may be extended by the appointing authority head for up to 60 additional days in cases involving exceptional circumstances. The appointing authority head shall provide the Division of EEO/AA and all parties with written notice of any extension and shall include in the notice an explanation of the exceptional circumstances supporting the extension.

(l) If the complainant disagrees with the determination of the (Appointing Authority), he or she may submit a written appeal, within twenty days of the receipt of the letter of determination from the (Appointing Authority), to the Merit System Board, PO Box 312, Trenton, NJ 08625. The appeal should contain a concise explanation of the disagreement. Regulations governing the appeal process are set forth at N.J.A.C. 4A:7-3.3.

(m) To the extent practicable and appropriate under the circumstances, confidentiality will be maintained throughout all phases of the intake, investigation and remediation process. Any breach of confidentiality by any party involved in this procedure may be considered an act of obstruction, and may subject that employee to disciplinary action.

(n) Any employee can file a complaint directly with external agencies that investigate discrimination/harassment charges in addition to utilizing this internal procedure. The time frames for filing complaints with external agencies indicated below are provided for informational purposes only. You should contact the specific agency to obtain exact time frames. The deadlines run from the last date of unlawful harassment or discrimination, not from the date that the internal workplace discrimination/harassment complaint to the employer is resolved.

1. Employees may file complaints with the following agencies:

i. Division on Civil Rights

N.J. Department of Law & Public Safety

180 days for violation of State law

ii. US Equal Employment Opportunity Commission (EEOC) 300 days."

4A:7-3.3 Department of Personnel proceedings: State service

(a) A complainant in the State career, senior executive and unclassified service, or who is an applicant for employment, may appeal a final decision of the department head to the Merit System Board within 20 days of receipt of the final letter of determination.

(b) The employee(s) against whom the complaint is made may appeal the decision to the Merit System Board within 20 days of receipt of the determination that a violation of the policy has been substantiated. However, if disciplinary action is recommended therein, the procedures for the appeal of disciplinary action shall be followed.

(c) Employees filing appeals which raise issues for which there is another specific appeal procedure must utilize those procedures. The Commissioner may require any appeal, which raises issues of alleged discrimination and other issues, such as examination appeals, to be processed using the procedures set forth in N.J.A.C. 4A:7-3.2 or a combination of procedures as the Commissioner deems appropriate. See N.J.A.C. 4A:2-1.7.

(d) The appeal from the final letter of determination, to the Merit System Board shall be in writing and include all materials presented by the complainant at the department level and the final letter of determination from the department head.

(e) The Merit System Board shall decide the appeal on a review of the written record or such other proceeding as it deems appropriate. See N.J.A.C. 4A:2-1.1(d).

(f) The appellant shall have the burden of proof in all discrimination appeals brought before the Merit System Board.

(g) The Director of the Division of EEO/AA shall be placed on notice of, and given the opportunity to submit comment on, appeals filed with the Merit System Board of decisions on discrimination complaints, regardless of whether or not the complaint was initially filed directly with the Director of EEO/AA.

4A:7-3.4 (Reserved)